



# Taking to the streets – lessons in anti-counterfeiting

**While trademark counsel rarely have the opportunity to take to the streets, valuable insights can be gained from the frontline experiences of investigators – including the need to respect and understand your enemy**

The true facts surrounding IP crimes are usually overlooked by those who have not been the victim of IP theft or who are outside the law enforcement community. Yet the reality is that terrorist organizations, organized crime groups and gangs are increasingly using IP crimes to raise money for their causes and organizations.

The reason why these criminal groups are turning to IP crime is simple: they can make more money selling counterfeit goods than by dealing drugs or committing other traditional crimes that law enforcement is constantly on the lookout for. In what other business could you pay \$2 for an item and sell it for \$40?

I often refer to IP theft as the 'perfect storm': it is a low-risk, high-reward crime. No other criminal activity offers such great rewards with a minimal risk of serving any significant jail time. After all, most law enforcement agencies around the world are overburdened working traditional and violent crimes, and don't have committed units that are focused solely on enforcing IP crimes.

Of course, not everyone involved in trademark counterfeiting and piracy is knowingly funding a criminal organization, terrorist cell or gang. However, anyone involved in the manufacture, sale or distribution of counterfeit goods is part of an overall cycle.

## **The need for consumer education**

Many consumers who buy counterfeit goods do so without any regard to how they are affecting the global economy, causing local job losses or potentially even supporting organized crime groups, terrorist organizations or gang members.

Consumers therefore need to be educated about the big picture. Individuals who buy counterfeiting goods experience none of the guilt that they would when buying, say, narcotics – but in reality, they should.

A common misconception is that counterfeiting and piracy are victimless crimes, acceptable because no one gets hurt and because big companies charge too much money for their products anyway. Monitor online blogs after a press release about a counterfeiting or piracy enforcement initiative and most of the posts will criticize the involvement of law enforcement and question why valuable resources are being 'wasted' in this way.

The people who share this mindset have not been educated about the true effects of IP crimes, and this urgently needs tackling. I believe that if consumers knew the real effects of their actions, and the fact that they could be supporting the criminal underworld as a result, they would think twice about buying counterfeit goods. There is no doubt that IP crimes are often tied to many other serious crimes; I have been personally involved in trademark counterfeiting cases that have been interlinked with narcotics distribution, terrorist funding, murder and extortion, human trafficking, public corruption and weapon sales.

In order to stem the flood of IP theft and counterfeiting, demand for counterfeit goods must be reduced. To achieve this, consumers need to be made aware that IP crimes are endangering our economy and negatively affecting our lives in many ways.

Those involved in counterfeiting operations come from all walks of life, with just one common thread between them: greed. All barriers are set aside when it comes to counterfeiting; rival gang members will even work together for the sake of making money from their counterfeiting activities. And it is not just those scraping a living who are involved, as most counterfeiters would have the public believe. I have personally been involved in several cases where hundreds of thousands of dollars in cash have been seized from counterfeiters, who portrayed themselves as poor people just trying to make ends meet.

The IP community must put a 'face' to counterfeiting, as nothing

## “ IP crime groups model themselves on drug organizations – understand how the drugs trade works and you understand the world of IP crimes ”

will change until the message is properly received by the public. This means doing much more to raise awareness of the true effects of counterfeiting and piracy.

### Understanding how IP crime organizations operate

Moving away from public perception, in order to investigate or take enforcement action against counterfeiters, it is important to understand how the organizations are structured and operate, how counterfeit goods are made and distributed through the international supply chains, and what groups are involved and why.

The IP crime groups model themselves on drug organizations, much like the Colombian drug cartels. If you understand how the drugs trade works, you effectively understand the world of IP crimes. In today's global economy, it has become increasingly clear that a majority of counterfeit goods are being made in China, with the manufacturers of counterfeit goods choosing to operate from countries where IP enforcement actions are rare and where there is a cost-effective, skilled workforce on the ground that can manufacture the illicit goods.

In many ways, the counterfeiters are no different from the companies whose goods they counterfeit. They structure their organizations and operations carefully in order to maximize the financial benefits and minimize their exposure.

Once the goods have been manufactured in a particular country, they are distributed to another where demand for counterfeit goods is high. The counterfeiters have the infrastructure and support required to smuggle goods elsewhere with ease. It is a very simple business equation: the counterfeiters will ship 10 separate containers full of fake goods, using 10 separate shipping companies and covers, to a single destination at the same time.

Based on simple percentages of seizures and other statistical data, they know that one container may get seized while the other nine will make it through to the destination, where their contents can be sold at an extremely high profit. The counterfeiters will make more than enough on the nine containers that make it through to compensate for the loss of one container.

### Respect your enemy

Through this understanding of how counterfeiters operate, I have developed a professional respect for those I am tasked with investigating. This ensures that I never underestimate them or get lulled into a false sense that I am 'ahead of the game'.

I have spent the past 15 years interviewing counterfeiters across the whole spectrum, as I believe that you can learn something from everyone. Speak to the lowest-level counterfeiters, who sell pirated music CDs on the streets. Speak to the highest-level counterfeiters, who operate major manufacturing facilities producing thousands of counterfeit garments on a daily basis. It is important, after all, to gain intelligence about the overall workings of the counterfeit trade.

One counterfeiter – let's call him John – had been in the counterfeiting business for over 15 years. He became involved when he was 16 after being introduced to the business by a family member.

John told me how he was making \$40,000 a week in cash distributing high-quality counterfeit watches to the operators of various websites. He opened up about the inner workings of the counterfeit trade and how he had been invited to visit a factory in China where child labour was being used to make counterfeit handbags.

He was amazed at how efficient and organized the counterfeiting operations were in China; I was amazed at how easily he was generating \$40,000 a week.

If you can develop professional working relationships with the counterfeiters, it can really pay off. Just like drug dealers, they love

to 'snitch' on their competitors. For instance, in one case an individual – let's call him Robert – contacted me and told me that a hardened supporter of Hezbollah was leaving Los Angeles with a large sum of cash.

He advised me that the cash was the proceeds of a counterfeit operation and that once the money had arrived in the Middle East, it was going to be given to Hezbollah. Robert had provided me with useful information in the past, so I knew that there may be some credibility to his claim and I passed the information on to the appropriate law enforcement agency.

The result? They located the subject and found that he was trying to leave the country with some \$120,000 in cash that he had not declared.

### Creating an effective brand protection programme

Armed with such an understanding, you can develop an effective brand protection programme that addresses all levels of the counterfeiting organization. The key to success for any programme is to engage the assistance of both law enforcement officials and a network of qualified investigators and attorneys, who can assist in protecting the brand in both the civil and criminal arenas.

In many cases you will have to start at or near the bottom of an organization and work your way up to the higher levels. IP crime investigations are just like drug cases: you cannot start an investigation at the Colombian cartel level unless you have been introduced into the organization by an insider. You will likely need to work your way into the organization and gain its trust in order to identify the true targets of interest.

Enforcement requires real commitment on the part of the brand owner, but it brings both immediate and long-term benefits. The world of counterfeiting is a small one: counterfeiters talk with one another, and brand owners will develop reputations among the counterfeiting community based on their enforcement efforts – or the lack thereof. It is important to ensure that you are not seen as an easy target.

Every effective brand protection programme should thus include the following:

- internet monitoring and enforcement strategy;
- law enforcement outreach and training;
- a criminal enforcement programme; and
- a civil restitution recovery programme.

### Tackling online infringement in the real world

The Web can be a tricky arena to operate in. The key to internet enforcement is to have a strategy to deal with websites operating around the world.

This requires a qualified team that truly understands what cost-effective steps can be taken to shut down websites quickly and efficiently. This team can also identify those targets that warrant further follow-up and may be worth pursuing for a large financial recovery.

However, if you can identify the site operator in the real world, it is best to enlist the assistance of law enforcement to arrest the subject. After serving a search warrant at the location and seizing the computer and business records, the brand owner may find

### An organized problem

Counterfeiting is clearly a growing phenomenon in the United States – hardened criminals are increasingly engaging in IP crimes such as trademark counterfeiting and piracy. Members of the following criminal organizations have been involved in the sale, distribution and manufacture of counterfeit or pirated goods:

- Grape Street Crips
- Hells Angels
- 18th Street
- MS 13
- East Coast Crips
- Hezbollah
- Los Carnales
- Compton Crips
- Raymond Street Crips
- Holy Bloods
- Skyline Pirus
- Rolling 60's
- Muslim Brotherhood
- The Mexican Mafia
- Black P Stone
- Pirus
- Crazy Riders

valuable information that identifies the subject's suppliers and customers, as well as financial documentation.

That said, it is always easier to target those selling from internet sites, such as Craigslist.com and ioffer.com. These subjects will often be willing to meet and conduct face-to-face transactions. You can therefore work with law enforcement and conduct a 'buy bust' operation, arresting the subject when he or she shows up to meet the supposed customer and sell more counterfeit merchandise.

It is always great putting internet sellers in jail because they have a false sense of security when hiding behind their computer monitors. You will be amazed how quickly word spreads on the Net, and how the amount of counterfeit postings will decrease in a certain area when arrests and enforcement have taken place.

### Relations with law enforcement

The training of law enforcement officials is crucial to an effective brand protection programme. Brand owners must reach out to law enforcement and show that they truly care about their brand and are willing to assist law enforcement to the fullest with any enforcement action taken – big or small. Brand owners can't pick and choose whether to support law enforcement.

Brand owners must also work diligently to present law enforcement with only those cases that warrant their attention and meet the criteria for criminal prosecution. A brand owner can do nothing worse than present a case to law enforcement that does not meet the criteria or is full of holes.

Brand owners develop a reputation with law enforcement, which is why it is vitally important for the investigators and attorneys who are working on behalf of the brand owner to be professional and credible.

On a positive note, given today's economic climate, there are innovative ways to recoup the costs of investigations from operators of websites and others engaged in counterfeiting.

The brand enforcement team must therefore be positioned to evaluate whether funds might be recovered from a subject – many attorneys can do this very well and at very limited cost to the brand owner. In fact, several programmes that I am familiar with have become totally self funding. In this way, brand owners can actually fund their own anti-counterfeiting efforts. [WTR](#)

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